

DECISION AND ORDER

Decision Issue Date Monday, October 16, 2017

PROCEEDING COMMENCED UNDER subsection 45 (1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): HOSSEINI HOMES CORPORATION

Applicant: MEHDI HOSSEINI

Property Address/Description: 47 MCKEE AVE

Committee of Adjustment Case File Number: 17 124371 NNY 23 MV (A0213/17NY)

TLAB Case File Number: 17 174695 S45 23 TLAB

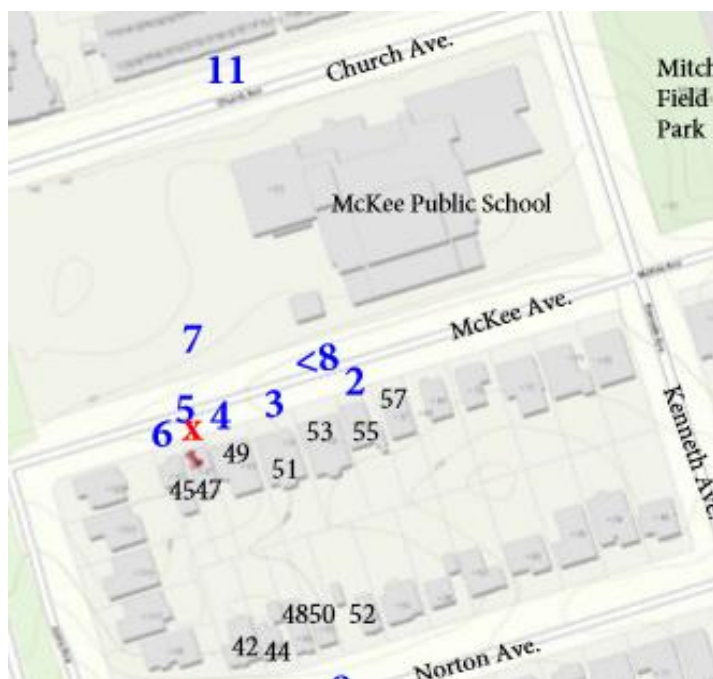
Hearing date: Friday, October 06, 2017

DECISION DELIVERED BY T. YAO

INTRODUCTION

Mr. Mehdi Hosseini, appeals the decision of the Committee of Adjustment of May 18, 2017. The Committee granted 15 variances and modified four others, which modifications were less than what Mr. Hosseini requested. They all concern his side yard setbacks; there are four variances because there are two side yards, east and west, and two applicable zoning by-laws.

BACKGROUND



No. 47 McKee Avenue is the second house in on the tier of houses on the south side of McKee Avenue, immediately east of the high-density strip on Yonge St., in the Yonge/Empress Ave area. The existing house will be demolished and replaced with a two storey house with an integral garage. To the west is No. 45 McKee, a two storey older-style redeveloped house. Its owner appeared at the Committee of Adjustment to support the variances. To the east is a bungalow, 49 McKee Ave. Its owner neither appeared nor wrote a letter to the Committee.

MATTERS IN ISSUE

Since Mr. Hosseini's appeal triggers a fresh hearing, he must demonstrate satisfactorily that each of the 19 variances, individually and collectively, meet the four tests under s. 45 of the *Planning Act*: namely, minor, desirable for the appropriate development of the property, and whether the variance maintains the intent and purpose of both the Official Plan as well as the two zoning by-laws (the new City wide harmonized By-law 569-2013 and the former North York By-law 7625). I must also consider consistency with Provincial policy and conformity with the Growth Plan for the Greater Golden Horseshoe.

The side yard variances were the only ones for which Mr. Hosseini was not entirely successful at the Committee of Adjustment. Mr. Hosseini proposes .9 m side yard setbacks for both side yards. No variance would be needed under the new harmonized By-law; the former North York By-law requires 1.5 m; the Committee authorized 1.2 m.

ANALYSIS, FINDINGS, REASONS

The only witness was Mr. Franco Romano, whom I qualified as an expert in land use planning entitled to give opinion evidence. Mr. Romano stated that this proposal was a desirable and modest sized house, given the limitations of the site. I have not recapitulated much of his evidence on the policy, especially the Official Plan and higher order policies, and geographic context.

Side Yard setbacks

The present house (i.e., the one that is to be demolished) is 32 cm from the east lot line, so the proposed .9 m (90 cm) setback will afford an additional 58 cm to the eastern neighbour (the one that did not indicate a position at the Committee of Adjustment). The western side yard is 100 cm, for which Mr. Hosseini proposes the same .9 m (90 cm) side yard setback, resulting in a reduction of .1 m (10 cm.) from the existing setback. These are reasonable variances. A further supporting argument for these variances is that the sought-for setbacks are allowed with no need for a variance by the new harmonized by-law. While the former by-law required 1.5 m in all cases, the new harmonized by-law is sensitive to lot frontages, so that for an undersized lot such as Mr. Hosseini's, the minimum is .9 m, which is what is proposed.

Frontage

The frontage requirements for both by-laws is 15 m. Most of the lots in the area are 15 m and this lot is on the low side of the undersized lots. The former North York by-law, unlike the new City-wide by-law, did not recognize existing undersized frontages (7.62 m for 47 McKee). Thus, under that by-law, even if one wished to conform to front, side and rear yard setbacks and height requirements etc. an owner would still have been required to go to the Committee of Adjustment. He or she can do nothing about the undersized frontage and yet as owner of a lot of record the owner has the right to build one residential building. This is also a reasonable variance.

Coverage and building length

Because no front or rear yard setback variances are sought, I find the building "fits in" as required by the official plan. In Mr. Romano's words, (which I accept): "The owner has not attempted to 'overbuild' the lot". Mr. Hosseini needs certain modest lot coverage and building length variances, which are reasonable in the circumstances of this lot

"Foyer size"

Mr. Romano explained that this requirement cannot be met with the integral garage configuration and the undersized frontage. However, the intent of this section of the zoning bylaw is to create a front door facing McKee Avenue, which is accomplished.

Height

A height variance is needed because of a window in the west elevation. The east elevation is windowless and does not trigger a variance requirement. On both sides, the designer has made the roofs slope away from the side yards to decrease the massing.

Parking Spaces

The By-laws require that a parking space be 5.6 m by 3.2 m. The space at 47 McKee meets the length requirement, but not the width. A width of 2.9 m is proposed. Mr. Romano said that even at 2.9 m, there will be an additional 30 cm beyond the minimum standard in the City's Transportation Planning Guidelines.

Conclusion

I am satisfied that this proposal is in keeping with the character of the neighbourhood and meets all aspects of any applicable provincial policy, the Growth Plan and the four tests under the *Planning Act*. In areas not canvassed and in those recited above, I adopt the uncontroverted planning evidence of the planner, Mr. Romano.

DECISION AND ORDER

I authorize the following minor variances, from 'proposed' to permitted, subject to the conditions also below recited:

LIST OF VARIANCES – 47 McKee Avenue

VARIANCES TO THE ZONING BY-LAWS:

1. Chapter 10.20.30.40.(1), By-law No. 569-2013. The maximum permitted lot coverage is 30.0% of the lot area. The proposed lot coverage is 32% of the lot area.

2. Chapter 10.20.40.10.(2), By-law No. 569-2013. The maximum height of all side exterior main walls facing a side lot line is 7.5m. The proposed height for portions of the side exterior main walls facing a side lot line is 8.0m.

3. Chapter 10.20.40.20.(1), By-law No. 569-2013. The maximum permitted building length is 17.0m. The proposed building length is 18.3m.

4. Chapter 900.3.10.(5), By-law No. 569-2013. The minimum required west side yard setback is 1.8m. The proposed west side yard setback is 0.9m.

**Decision of Toronto Local Appeal Body Panel Member: Panel Member
TLAB Case File Number: 17 174695 S45 23 TLAB**

5. Chapter 900.3.10.(5), By-law No. 569-2013. The minimum required east side yard setback is 1.8m. The proposed east side yard setback is 0.9m.

6. Chapter 10.5.40.10.(5), By-law No. 569-2013. A minimum of 10.0 m² of the first floor area must be within 4.0m of the front main wall. An area of 8.0 m² is within 4.0m of the front main wall.

7. Chapter 200.5.1.10.(2), By-law No. 569-2013. Parking spaces must have minimum dimensions of 3.2m width by 5.6m length. The proposed parking space is 2.9m by 5.6m.

8. Sections 13.2.1 and 6(8), By-law No. 7625. The minimum required lot frontage and width is 15.0m. The proposed lot frontage and width is 7.62m.

9. Section 13.2.2, By-law No. 7625. The minimum required lot area is 550.0m². The proposed lot area is 321.64m².

10. Section 13.2.3(b), By-law No. 7625. The minimum required west side yard setback is 1.5m. The proposed west side yard setback is 0.9m.

11. Section 13.2.3(b), By-law No. 7625. The minimum required east side yard setback is 1.5m. The proposed east side yard setback is 0.9m.

12. Section 13.2.4, By-law No. 7625. The maximum permitted lot coverage is 30.0% of the lot area. The proposed lot coverage is 32.0% of the lot area.

13. Section 13.2.5A, By-law No. 7625. The maximum permitted building length is 16.8m. The proposed building length is 18.3m.

14. Section 13.2.6, By-law No. 7625. The maximum permitted building height is 8.8m. The proposed building height is 9.1m.

15. Section 6A(3), By-law No. 7625. The minimum required parking space is 3.2m by 5.6m for the space within the garage. The proposed parking space size is 2.9m by 5.6m.

Conditions:

1. Where there are no existing street trees, the owner shall provide payment in lieu of planting one street tree on the City road allowance abutting each of the sites involved in the application. The current cost of planting a tree is \$583.00.

2. The proposal be developed substantially in accordance with the west elevation drawing submitted to the Committee of Adjustment, date stamped as received by the City of Toronto Planning Division, May 8, 2017. By “substantially”, it is meant that the building materials may change. It is not expected that the style and location of windows will change.

.....

X

Ted Yao

T. Yao
Chair, Toronto Local Appeal Body
Signed by: Ted Yao